

MAR 07 2007

Serial No. 09/785,100
RPC 0559 PUS; 67080-285 PUS1REMARKS

Claims 52-72 are rejected under 35 UC 103(a) as being unpatentable over Koefeldal in view of Roberts and Graser. The Examiner states that it would be obvious to modify the crate of Koefeldal to include a carrier and a label for product recognition or advertising. Applicant respectfully disagrees.

The claimed invention is not obvious. Neither reference discloses, suggests or teaches an assembly including a crate with display openings that are elongated in a horizontal direction as claimed. As shown in Figure 1, Koefeldal discloses a crate 20 including windows 63 that are elongated in a vertical direction. The box 10 of Roberts does not include any windows, and Graser does not disclose a crate. None of the references disclose, suggest or teach a crate with display openings that are elongated in a horizontal direction as claimed. Therefore, the references taken together do not disclose, suggest or teach the claimed invention.

Claim 62 is rejected under 35 USC 103(a) as being unpatentable over Koefeldal in view of Roberts, Graser and Apps et al. Claim 62 depends on patentable independent claim 52 and is allowable for the reasons set forth above. The claimed invention is not obvious as none of the references disclose, suggest or teach an assembly including a crate with display openings that are elongated in a horizontal direction.

Claims 73 is rejected under 35 USC 103(a) as being unpatentable over Koefeldal in view of Roberts, Graser and Champlin et al. The Examiner states that Champlin et al. teaches a carrier with six compartments that each receive a bottom portion of a bottle, and it would be obvious to employ this carrier in Koefeldal. Applicant respectfully disagrees.

It would not be obvious to employ a carrier that holds 6 bottles in Koefeldal. The case 10 of Koefeldal holds are 1 liter bottles (column 10, lines 3 to 8). If a carrier holding 6 bottles was employed in the case 10, each carrier would hold 6 liters of liquid. This would be too heavy and difficult for a consumer to handle. There is motivation to employ a carrier that holds 6 bottles B in Koefeldal as it is not practical.

Additionally, the claimed invention is not obvious because it is not possible to employ the carrier of Champlin et al. in the crate 10 Koefeldal. As shown in Figure 14 of Koefeldal, a corner area of the crate 20 includes a curved corner panel 65 sized to receive and secure an individual bottle B (column 7, lines 48 to 59). A side lower panel portion

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74 of sidewalls 25 and endwalls 27 also include a curved panel. Due to the structure of the curved panels, it would not be practical to employ a carrier in the crate 20. That is, the crate 20 is designed to receive individual bottles B and is not designed to receive a carrier that holds bottles. The carrier of Champlin et al. would not fit in the crate 20 of Koefeldt due to the shape of the walls. Therefore, it is not obvious to employ a carrier with compartments that each receive a bottom portion of a bottle as recited in claim 73.

Claims 95 and 96 are rejected under 35 USC 103(a) as being unpatentable over Koefeldt in view of Roberts, Graser and Marks (U.S. Patent No. 4,115,939). Claims 95 and 96 depend on patentable independent claim 52 and are allowable for the reasons set forth above. The claimed invention is not obvious as none of the references disclose, suggest or teach an assembly including a crate with display openings that are elongated in a horizontal direction.

Claims 52-73, 95 and 96 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 of Apps in view of Roberts, Graser, Chaplin et al. and Marks. The Examiner states that Terminal Disclaimer filed on November 17, 2006 was not proper because the Power of Attorney was not effective. The Examiner continued that the customer number could not be determined. Applicant is filing a new Power of Attorney herewith. Applicant filed a Statement under 37 CFR 3.73(b) on January 8, 2007 stating that Assignee is the owner of United States Patent No. 5,979,654. Applicant respectfully requests entry of the Terminal Disclaimer filed November 17, 2006.

Claims 52-73, 95 and 96 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the claims and drawings of Apps (US Patent No. D400,012). The rejection is improper. A "two-way" test is to be applied between the design patent and the pending claims. Under the "two-way" test, "the obviousness-type double patenting rejection is appropriate only if the claims of the two patents cross-read, meaning that 'the test is whether the subject matter of the claims of the patent sought to be invalidated would have been obvious from the subject matter of the claims of the other patent, and vice versa'." *Carman*, 220 USPQ at 487. The Examiner has not applied the "two-way" test to the claims, and therefore the rejection is improper.

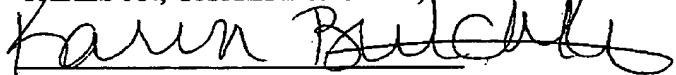
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The Commissioner is authorized to charge Deposit Account No. 50-1984, in the name of Rehrig Pacific Company, \$1040.00 (\$790.00 for the Request for Continued Examination Fee and \$250 for five additional dependent claims over 20). No additional fees are seen to be required. If any additional fees are due, however, the Commissioner is authorized to charge Deposit Account No. 50-1482, in the name of Carlson, Gaskey & Olds, P.C., for any additional fees or credit the account for any overpayment. Therefore, favorable reconsideration and allowance of this application is respectfully requested.

Respectfully Submitted,

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CERTIFICATE OF FACSIMILE

I hereby certify that the enclosed RCE Transmittal, RCE Response, Power of Attorney are being facsimile transmitted to the United States Patent and Trademark Office, 571-273-8300, on November 17, 2006.



Karin Butchko